



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Proposed Revocation of Massage Technician Licenses.
MEETING DATE: August 5, 1992
PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration of appeals from orders of revocation by the Police Department of Massage Technician Licenses of Karen Ray, Un Mi Barnes, and Jennifer Kwi Yoon.

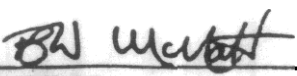
BACKGROUND: Under Lodi Municipal Code Section 5.32.160, the Chief of Police may initiate revocation proceedings against the holder of a City massage technician's license if it is determined that the licensee has violated any state or Federal law or has permitted a violation of State or Federal law in connection with the operation of the massage business.

Under this provision, the Chief of Police or his designee has made a determination that the above-named licensees, in separate matters, have violated or allowed violation of California Penal Code Section 647(b) (Disorderly Conduct) in conjunction with their employment as Massage Technicians or Licensees.

Timely appeals have been filed by the three persons named above, requesting that the Council hear and decide the matters. Under Municipal Code Section 5.32.170, the Council is obligated to hear the matters "... at its next regular meeting, not sooner than the fifth day after such appeal is filed."

All persons involved have been mailed notice of the scheduled hearings.

Respectfully submitted,


Bob McNatt
City Attorney

BM/vc

APPROVED _____

PDMASG.3/TXTA.01V

THOMAS A. PETERSON
City Manager



JOHN C. PYLE
Attorney at Law
104 NORTH SCHOOL STREET, SUITE 209
LODI, CA. 93240
TELEPHONE (209) 333-1771

15 July 1992

Re: Appeal of Revocation of of Certificate pursuant to Sections
5.32.160 and 532.170

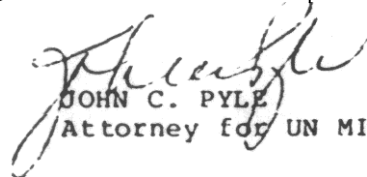
Clerk
City Of Lodi
City Hall
Lodi, California

Madame Clerk:

Pursuant to the provisions of Section 5.32.170, I hereby appeal the
action of the by Captain Jerry J. Adams, in serving notice of
revocation of permit pursuant to the provisions of Section 5.32.160.

This appeal is made on the grounds that not only was Captain Jerry J.
Adams action void because he does not have the power to make such
revocation, but the section of the City Code that empowers the Chief
to revoke the certificate is unconstitutional in that it violates the
due process clause of both the California and United States
Constitutions, and is also unconstitutionally vague.

Since the action of Captain Jerry J. Adams is void, any City of Lodi
official acts upon the above revocation, the action will subject the
individuals responsible to personal liability and the City of Lodi to
liability if they were acting under any color of authority.


JOHN C. PYLE
Attorney for UN MI BARNES

LODI POLICE DEPARTMENT

Floyd A. Williams
Chief of Police

Thomas A. Peterson
City Manager



230 WEST ELM STREET
LODI, CALIFORNIA 95240
(209) 333-6727

July 2, 1992

Ms. Un Mi Barnes
1953 Manor Place #104
Fairfield, California 94533

Re: LPD Case No. 92-6308

Dear Ms. Barnes:

This letter is to inform you that the Lodi Police Department has conducted an investigation into allegations of prostitution located at your place of employment, 331 E. Kettleman Lane, Lodi. The result of that investigation revealed that you engaged in or permitted a violation of Section 647(b) of the California Penal Code, Solicitation of Prostitution. Such Violation provides a basis for revocation of your City of Lodi massage technician's permit.

Pursuant to Lodi City Code, Section 5.32.160 (Revocation Procedure), you are hereby formally notified that your massage technician permit for operating within the City of Lodi, California is revoked. This revocation will become effective on the fifth day after this notice is mailed. An appeal procedure is available to you, which is outlined in the attached section of the Lodi city code. You are required to immediately surrender, to the Chief of Police, your revoked certificate.

If you have any questions regarding this revocation or the appeal procedures that are not answered in the attached sections, please contact Detective Matt Foster at 333-6747, Monday through Friday, 8:00 AM to 5:00 PM.

Sincerely,

FLOYD A. WILLIAMS
Chief of Police

By Jerry Adams
Captain Jerry J. Adams
Commander
Investigations Division

JJA/mjk
cc: Chief Williams
File

Mailed: 7/14/92

An Honor to Serve . . . A Duty to Protect

CITY COUNCIL

JAMES W. PINKERTON, Mayor

PHILLIP A. PENNINO

Mayor Pro Tempore

W. D. M. HINCHMAN

JACK A. SIEGLOCK

JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET

P.O. BOX 3006

LODI, CALIFORNIA 95241-1910

(209) 314-5614

FAX (209) 333-6795

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

BOB McNATT
City Attorney

July 20, 1992

Ms. Un Mi Barnes
1953 Manor Place #104
Fairfield, CA 94533

Subject: REVOCATION OF MASSAGE TECHNICIAN LICENSE

Dear Ms. Barnes:

Pursuant to Chapter 5.32 of the Lodi Municipal Code, your appeal in the matter of the proposed revocation of your massage technician's license will be considered by the Lodi City Council at its next regular meeting on August 5, 1992 at 7:30 p.m. or as soon thereafter as the matter may be heard.

In the interim and until such time as the Council shall reach a decision on this matter, the order of revocation of your massage technician's permit issued by the Lodi Police Department is stayed.

I can be reached days at (209) 333-6701, if there are further questions.

Sincerely yours.



BOB W. McNATT
City Attorney

BM:vc

cc: John C. Pyle, Enquire
Floyd Williams, Chief of Police
Captain Jerry Adams
Detective Matthew Foster
City Clerk

PDMASG.2/TXTA.01V

PACHECO & PACHECO, INC.
A LAW CORPORATION
910 FLORIN ROAD, SUITE 204
SACRAMENTO, CALIFORNIA 95831

July 22, 1992

CHARLES A. PACHECO
CAROLYN A. PACHECO

Lodi City Council
CITY CLERK'S OFFICE
P.O. Box 3006
Lodi, California 95241-1910

RE: Karen A. Ray
LPD Case No. 92-6308

Dear Council Members:

Please be advised that I represent Karen Ray with respect to the revocation of her massage technician permit with the City of Lodi. Pursuant to the July 2, 1992, letter from the Lodi Police Department, the revocation of her permit was based upon investigation that she "engaged in or permitted a violation of Section 647(b) of the California Penal Code, solicitation of Prostitution."

Please consider this letter our written notice of appeal to such **revocation** action, the exceptions being that no such solicitation of prostitution occurred involving Ms. Ray.

For your information, although the revocation letter sent by the Lodi Police Department was dated July 2, it was not post marked by the LPD until July 14, 1992, and was not received by Ms. Ray until Monday, July 20, 1992. In addition, it was sent to the wrong address (835 West Harney Lane, #80, Lodi, California 95240). Ms. Ray's address is 320 south Ham Lane. Lodi, California 95242-3511.

I would appreciate someone from your office contacting my secretary, Susan, in order to schedule a date for the hearing which is convenient to all parties herein.

Very truly yours,


CHARLES A. PACHECO

CAP:sth

cc: Karen A. Ray

captain Jerry Adams
Lodi Police Department

RECEIVED

1992 JUL 16 PM 4:11

331 E. Kettleman Lane
Lodi, CA 95240
July 16, 1992

CITY OF LODI
CITY CLERK

Re: Appeal of 'Revocation of ~~of~~ Certificate pursuant to Sections
5.32.160 and 532.170

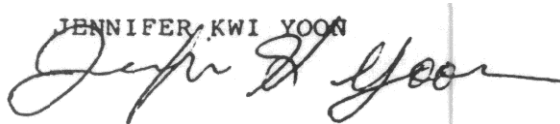
Clerk
City of Lodi
city Hall
Lodi, California

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Constitutions, and is also unconstitutionally vague.

JENNIFER KWI YOON



CITY COUNCIL

JAMES W. PINKERTON, Mayor
PHILLIP A. PENNINO
Mayor Pro Tempore
DAVID M. HINCHMAN
JACK A. SIEGLOCK
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
FAX (209) 333-6795

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
BOB McNATT
City Attorney

July 20, 1991

Ms. Jennifer Kwi Yoon
331 E. Kettleman Lane
Lodi, CA 95140

Subject: REVOCATION OF MASSAGE TECHNICIAN LICENSE

re Ms. Yoon:

Pursuant to Chapter 5.31 of the Lodi Municipal Code, your appeal in the matter of the proposed revocation of your massage technician's license will be considered by the Lodi City Council at its next regular meeting on August 5, 1992 at 7:30 p.m. or as soon thereafter as the matter may be heard.

In the interim and until such time as the Council shall reach a decision on this matter, the order of revocation of your massage technician's permit issued by the Lodi Police Department is stayed.

I can be reached days at (209) 333-6701. If you are represented by an attorney, he or she may contact me if there are further questions. If you are not represented by an attorney, you may contact me directly.

Sincerely yours,



BOB W. McNATT
City Attorney

BM:vc

cc: Floyd Williams, Chief of Police
Captain Jerry Adams
Detective Matthew Foster
City Clerk

PDMASG/TXTA.01V

CITY COUNCIL

JAMES W. PINKERTON, Mayor
PHILLIP A. PENNINO
Mayor Pro Tempore
DAVID M. HINCHMAN
JACK A. SIEGLOCK
JOHN R. (Randy) SNIDER
August 6, 1992

CITY OF LODI

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P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 314-5634
FAX (209) 333-6795

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
BOB McNATT
City Attorney

Ms. Jennifer Kwi Yoon
331 E. Kettleman Lane
Lodi, CA 95140

Subject: NOTICE OF REVOCATION: MASSAGE TECHNICIAN LICENSE

Dear Ms. Yoon:

On August 5, 1991, the Lodi City Council, at your request, considered at its regular meeting, the appeal of an Order of Revocation by the Lodi Police Department of your Massage Technician License. The underlying facts upon which the proposed revocation was based have been previously disclosed to you (see Lodi Police Department Crime Report No. 92-6308). You were advised by letter of July 20, 1992 of the date, time and location of such hearing.

You failed or refused to appear in person or by representative at that hearing. Following presentation of evidence by the Lodi Police Department, the City Council found that you have violated California Penal Code Section 647(b) [solicitation of prostitution] by agreeing to a sex act in exchange for money or other consideration, and that this violation formed a basis for revocation of your City Massage Technician License under Lodi Municipal Cod. Section 5.32.160.

By vote of the Council, your Massage Technician License is hereby revoked, effective immediately. You are ordered to forthwith surrender your license to the Lodi Police Department, and to immediately cease any activities within the City of Lodi as a licensed Massage Technician. Failure to do so may subject you to criminal liability.

Sincerely,


BOB W. McNATT

City Attorney

BM:vc

cc: Lodi City Council Members
Lodi Police Dept., Attn: Det. Matt Poster
City Clerk

PDMASG.8/TXTA.01V

CITY COUNCIL

JAMES W. PINKERTON, Mayor

PHILLIP A. PENNINO

Mayor Pro Tempore

DAVID M. HINCHMAN

JACK A. SIEGLOCK

JOHN R. (Randy) SNIDER

August 6, 1992

CITY OF LODI

CITY HALL, 221 WEST PINE STREET

P.O. BOX 3006

LODI, CALIFORNIA 95241-1910

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FAX (209) 333-6795

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

BOB McNATT
City Attorney

Ms. Un Mi Barnes
1953 Manor Place #104
Fairfield, CA 94533

subject: NOTICE OF REVOCATION: MASSAGE TECHNICIAN LICENSE

Dear Ms. Barnes:

On August 5, 1992, the Lodi City Council, at your request, considered at its regular meeting, the appeal of an Order of Revocation by the Lodi Police Department of your Massage Technician License. The underlying facts upon which the Proposed revocation was based have been previously disclosed to you and/or your attorney (see Lodi Police Department Crime Report NO. 92-6308). You were advised by letter of July 20, 1992 of the date, time and location of such hearing.

You failed or refused to appear in person or by representative at that hearing. Following presentation of evidence by the Lodi Police Department, the City Council found that you have violated California Penal Code Section 647(b) [solicitation of prostitution] by agreeing to a sex act in exchange for money or other consideration, and that this violation formed a basis for revocation of your City Massage Technician License under Lodi Municipal Code Section 5.32.160.

By vote of the Council, your Massage Technician License is hereby revoked, effective immediately. You are ordered to forthwith surrender your license to the Lodi Police Department, and to immediately cease any activities within the City of Lodi as a licensed Massage Technician. Failure to do so may subject you to criminal liability.

sincerely,



BOB W. McNATT
City Attorney

BM:vc

cc: John C. Fyle, Esquire
Lodi City Council Members
Lodi Police Dept, Attn: Det. Matt Foster
City Clerk

PDMASG.7/TXTA.01V

CITY COUNCIL

JAMES W. PINKERTON, Mayor

PHILLIP A. PENNINO

Mayor Pro Tempore

DAVID M. HINCHMAN

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JOHN R. (Randy) SNIDER

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THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

BOB McNATT
City Attorney

August 6, 1992

Ms. Karen A. Ray
c/o Charles A. Pacheco, Esquire
Pacheco & Pacheco, Inc.
910 Florin Road, Suite 204
Sacramento, CA 95831

subject: **REVOCATION PROCEEDINGS: MASSAGE TECHNICIAN'S LICENSE**

Dear Mr. Pacheco:

The purpose of this letter is to memorialize the stipulations and agreements arrived at between the Lodi City Council and your client, Karen A. Ray at the meeting of August 5, 1992 regarding Ms. Ray's City license for massage technician.

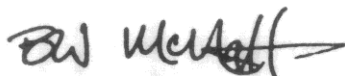
The stipulations and agreements between the parties reached are as follows:

1. The hearing before the City Council on revocation of your client's City Massage Technician License will be continued until the City Council meeting of September 16, 1992;
2. Should your client be convicted of violation of California Penal Code Section 647(b) [solicitation for prostitution] or a related offense at her trial now scheduled for September 3, 1992, her City Massage Technician License will be immediately revoked;
3. Should your client be acquitted of such charges, or if the matter results in a hung jury or is otherwise dismissed, your client may retain her City Massage Technician license.
4. Pending such criminal proceedings, your client stipulates that her City Massage Technician license shall immediately be suspended and she will forthwith surrender it to the City to hold, awaiting the outcome of the criminal matter. The unspoken corollary here is that she will not engage in employment as a Massage Technician in the City of Lodi while her license is so suspended.
5. This matter will be continued to the September 16, 1992 City Council meeting for further action as necessary.

Ms. Karen A. Ray
c/o Charles A. Pacheco, Esquire
August 6, 1992
Page Two

If this comports with your understanding of the stipulations, please counter-sign, date, and return this letter along with Ms. Ray's City Massage Technician license. If I have misrepresented any aspect of the stipulations, please advise immediately.

Sincerely,



BOB W. McNATT
City Attorney

SO STIPULATED:

CHARLES A. PACHECO, Esquire

Dated _____

BM:vc

cc: Lodi City Council Members
Lodi Police Department, Attn: Detective Matt Foster
City Clerk _____

PDMASG.6/TXTA.01V

JOHN C. PYLE
Attorney at Law
104 NORTH SCHOOL STREET, SUITE 209
LODI, CA. 95240
TELEPHONE (209) 333-1771
16 July 1992

RECEIVED

1992-5 JUL 16:50

CITY CLERK
CITY CLERK

Re: Appeal of Revocation of of Certificate pursuant to Sections
5.32.160 and 532.170, Open Letter to City Counsel

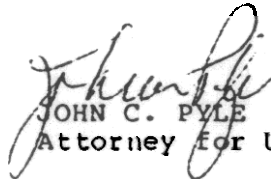
Clerk
City of Lodi
City Hall
Lodi, California

Honorable Mayor and members of the City Counsel:

Since I have filed a complaint for declaratory relief in the Superior Court of California, County of San Joaquin, and I have asked for the issuance of a restraining order pending the outcome of the suit, I feel that ~~it~~ is inappropriate to participate in a hearing under provisions of a City Code which may be Unconstitutional.

I therefore, request that, as to appellant, UN MI BARNES, that the counsel continue the matter until after the Superior Court has had the opportunity to hear arguments on the underlying request for restraining order. It is my clients position that she has not violated any federal, state, or city ordinance and that the acts in revoking her license are without cause. If the superior court rules that the requirements of Due Process and the acts do not violate my clients equal protection rights, she will be more than willing to defend herself before any administrative, legislative or judicial body.

Because of the above, and the fact that no adequate notice was given, I request that the Counsel hearing be continued until September for resolution of the matter of the revocation of the license of UN MI BARNES.


JOHN C. PYLE
Attorney for UN MI BARNES